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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Scott Huminski,)	No. CV11-2352-PHX-JAT
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
Maricopa County, et al.)	
)	
Defendant.)	
)	

Plaintiff Scott Huminski filed a Notice of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(i) on March 26, 2012. (Doc. 19.) Plaintiff correctly notes that he has the right to dismiss his case without a Court Order because he filed his Notice of Dismissal before any party had served an answer or a motion for summary judgment. F.R.Civ.P. 41(a)(1)(I).

In his Notice, Plaintiff writes, “this case is dismissed without prejudice as to all defendants who have not filed a responsive pleading.” (Doc. 19 p.2.) No Defendant has filed a responsive pleading in this case because no Defendant has filed an answer. Defendant Tim Dorn filed a Motion to Dismiss (Doc. 16), but a motion to dismiss is not a responsive pleading within the meaning of the Federal Rules of Civil Procedure. *Randle v. Crawford*, 604 F.3d 1047, 1052 (9th Cir. 2010); *Shaver v. Operating Engineers Local 428 Pension Trust Fund*, 332 F.3d 1198, 1201 (9th Cir. 2003).

The Court therefore construes Plaintiff’s Notice as a voluntary dismissal of his entire

1 case. No Defendant has filed a response to the Notice of Dismissal. Pursuant to Local Rule
2 of Civil Procedure 7.2(i), the Court deems the failure to respond as consent to dismissal
3 without prejudice.

4 Accordingly,

5 **IT IS HEREBY ORDERED** pursuant to Plaintiff's Notice of Dismissal (Doc. 19),
6 that this case is dismissed in its entirety without prejudice.

7 **IT IS FURTHER ORDERED** denying as moot all pending motions in this case.

8 DATED this 25th day of April, 2012.

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12 James A. Teilborg
13 United States District Judge
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